

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>J. EDUARDO RIOS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 217,846
<b>KOSS CONSTRUCTION COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>UNITED STATES FIDELITY &amp; GUARANTY CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on May 20, 1997.

**ISSUES**

The Order grants claimant's request for medical treatment. The respondent asks the Appeals Board to review the following issues:

- (1) Whether claimant suffered accidental injury.
- (2) Whether claimant sustained an injury which arose out of and in the course of his employment with respondent.

In its brief, respondent also suggests an additional issue, namely, whether claimant is entitled to medical treatment. The Appeals Board has jurisdiction to review the issues listed in the Application for Review. Whether claimant is in need of medical treatment is not a question subject to review at this stage of the proceedings. K.S.A. 44-534a and K.S.A. 44-551, as amended.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed. Claimant testified that he injured his shoulder and upper back on October 24, 1996, when he tripped over a string line. Respondent disputes the claim, pointing to various inconsistencies in claimant's testimony. Respondent also notes that after claimant left employment with respondent, he worked for another employer doing work which could have caused or aggravated his injury.

After reviewing the testimony, the Appeals Board concludes that the inconsistencies are not as striking as suggested, given that claimant testified through an interpreter. The inconsistencies which do exist may well have resulted from language or translation differences. Respondent also challenges claimant's version because claimant did not report hitting a string line; and the respondent was not aware of the sensors being set off as they would have had someone struck the string line. Claimant acknowledged that he was expected to report any contact with the string line but testified the string line was not moved when he tripped over it. Finally, while claimant did engage in work which could have caused or aggravated his injury, there is no evidence, other than speculation, to suggest that his work with the subsequent employer did cause any additional injury.

The Order entered in this case relies principally on the credibility of the claimant's testimony. The judgment of the Administrative Law Judge, who observed claimant testify, is given deference by the Board. Accordingly, the Appeals Board agrees with and affirms the decision of the Administrative Law Judge granting claimant's request for medical benefits. The Order of May 20, 1997, is affirmed.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark, dated May 20, 1997, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

c: Garry L. Howard, Wichita, KS  
Patricia A. Wohlford, Overland Park, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director